

presented in the comments will be considered.

21. *IRFA Comments.* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in the *Memorandum and Order/Further Notice of Proposed Rulemaking*.

22. *Paperwork Reduction.* The *FNPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 and was found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

23. *Authority.* This action is taken pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF AGRICULTURE

48 CFR Parts 426 and 452

[AGAR Case 96-01]

RIN 0599-AA00

Office of Procurement and Property Management; Agriculture Acquisition Regulation; Preference for Selected Biobased Products

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document invites written comments on a proposed amendment to the Department of Agriculture's Acquisition Regulation (AGAR). We are proposing to amend the AGAR to establish policy and procedures for set-asides and preferences for products developed with assistance provided by the Alternative Agricultural Research and Commercialization Corporation (AARC).

DATES: Submit comments on or before December 5, 1997.

ADDRESSES: Submit written comments to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy

Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250-9303. See **SUPPLEMENTARY INFORMATION** section for electronic access addresses for comments.

FOR FURTHER INFORMATION CONTACT: J. R. Holcombe, Jr., (202) 720-8484.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988.

B. Regulatory Flexibility Act.

C. Paperwork Reduction Act.

III. Public Comments

IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. This proposed rule would amend the AGAR to establish acquisition preferences for selected biobased products; i.e., nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (AGAR Case 96-01).

The Alternative Agricultural Research and Commercialization Corporation (AARC), a wholly-owned government corporation of the Department of Agriculture (USDA), provides financial assistance to private companies and other parties to commercialize biobased products. Section 1665 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5909), added by section 729 of the Federal Agricultural Improvement and Reform Act of 1996, authorizes Federal executive agencies to establish set asides and preferences for biobased products that have been commercialized with assistance provided by AARC. Pursuant to the authority provided by Section 1665, USDA proposes to add subpart 426.70 to the AGAR to establish policies and procedures for AARC preferences and set-asides.

The following changes to the AGAR are proposed:

(a) AGAR part 426 is proposed to be added, with a subpart 426.70, Preference for Selected Biobased Products. This proposed subpart establishes policy and procedures for preferences and set-asides for products developed with AARC assistance.

(b) Provisions 452.226-70, Preferred Products, 452.226-71, Set-aside for Mandatory Products, and 452.226-72, Price Preference for Award, are proposed to be added to AGAR part 452.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this proposed regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 96-01) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

IV. Electronic Access Addresses

You may submit comments by sending electronic mail (E-mail) to RHOLCOMBE@USDA.GOV, or via fax at (202) 720-8972.

List of Subjects in 48 CFR Parts 426 and 452

Agriculture, Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations as follows:

Add Part 426 to subchapter D to read as follows:

PART 426—OTHER SOCIOECONOMIC PROGRAMS**Subpart 426.70—Preference for Selected Biobased Products**

Sec.

- 426.7000 Scope of subpart.
- 426.7001 Applicability.
- 426.7002 Authority.
- 426.7003 Policy.
- 426.7004 Definitions.
- 426.7005 Preference list.
- 426.7006 Use of a set-aside or a price preference.
- 426.7007 Use of a technical evaluation preference.
- 426.7008 Identification of preferred products.
- 426.7009 Contract provisions.

Authority: 5 U.S.C. 301; 7 U.S.C. 5909; 40 U.S.C. 486(c)

Subpart 426.70—Preference for Selected Biobased Products**426.7000 Scope of subpart.**

This subpart supplements the FAR to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909).

426.7001 Applicability.

This subpart applies to USDA and all of its components, including corporations.

426.7002 Authority.

Section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909) authorizes USDA to establish set-asides and other preferences for products that have been assisted by the Alternative Agricultural Research and Commercialization Corporation (AARC).

426.7003 Policy.

(a) AARC provides financial assistance to private companies and other parties to commercialize nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (biobased products). Biobased products by their nature are environmentally friendly, and, in many instances, use agricultural material that otherwise would be wasted. It is the policy of USDA to acquire AARC

products to the maximum extent practicable. This policy applies to all acquisitions of products regardless of dollar value.

(b) USDA shall satisfy its requirements for products the same or essentially the same as AARC products by applying the preferences or set-asides described by this subpart.

426.7004 Definitions.

As used in this subpart—
AARC products are products developed with assistance provided by AARC as authorized by 7 U.S.C. 5905.

Acquisitions involving the use of products means an acquisition in which a Government contractor uses products in contract performance.

Acquisitions of products means an acquisition of one or more products for the use of the Government.

Price preference means an amount, expressed as a percentage, to be used in the evaluation of offers in an acquisition of products.

Set-aside means a requirement that vendors responding to a solicitation offer AARC products.

Solicitation includes actions taken under parts 12, 13, 14, 15, and 36 of the Federal Acquisition Regulation.

Technical evaluation preference means the use of an award factor or subfactor in which the Government expresses its preference for AARC products.

426.7005 Preference list.

(a) The Office of Procurement and Policy Management (OPPM) and AARC jointly shall establish and maintain a Preference List for AARC products.

(b) The Preference List shall contain the list of preferred products, source information for these products, the type(s) of preference to be applied, the beginning and ending dates for the use of preferences, and other terms established to define the preference given to a product.

(c) The Preference List will be publicized within USDA by means of AGAR Advisories (see 401.371). Copies of the Preference List may be obtained from OPPM. The Preference List will also be posted on the World Wide Web at the USDA Procurement Home Page.

426.7006 Use of a set-aside or a price preference.

Acquisitions for products the same or essentially the same as those products appearing on the Preference List shall either be set-aside exclusively or shall include a price preference for those products shown on the Preference List. The actual price preference to be used shall be determined by the requiring

office but may not exceed the percentage shown on the Preference List.

426.7007 Use of a technical evaluation preference.

Acquisitions involving the use of products the same or essentially the same as those products appearing on the Preference List shall include a technical evaluation preference, if authorized in the Preference List. The technical evaluation preference may be determined by the contracting officer specifically for each acquisition.

426.7008 Identification of preferred products.

(a) Products subject to a set-aside or technical preference shall be separately listed in the schedule, specification, or performance work statement.

(b) Products subject to a price preference shall be separately listed in the schedule.

426.7009 Contract provisions.

(a) Each solicitation containing a price or technical preference under this subpart shall contain the provision 452.226-70, Preferred Products.

(b) Each solicitation for products subject to a set-aside shall include the provision 452.226-71, Set-Aside For Mandatory Products.

(c) Each solicitation for products subject to a price preference shall include the provision 452.226-72, Price Preference for Award.

(d) Solicitations for products may contain both the provision in 452.226-71 and the provision found in 452.226-72.

(e) The provisions prescribed in this section are not required for acquisitions accomplished using the purchase card as a stand alone tool.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 452 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Add sections 452.226-70, 452.226-71, and 452.226-72 to read as follows:

452.226-70 Preferred Products.

As prescribed in 426.7009(a), include the following provision:

PREFERRED PRODUCTS (XXXX 1997)

Specific products required by this solicitation and resulting contract, are subject to a price or a technical preference. A list of these products, the specific preference, and

the manufacturer or producer is included below.
Contract Line Item (or other location in this solicitation):*

Product:* _____
Manufacturer/Producer:* _____

Preference:* _____
Q _____

(End of provision)
**For each line item to which a preference applies. Contracting officer shall insert appropriate information.*

452.26-71 Set-aside for Mandatory Products.

As prescribed in 426.7009(b), include the following provision.

SET-ASIDE FOR MANDATORY PRODUCTS (XXXX 1997)

Specific products are set-aside as mandatory products. These are separately listed in the schedule, specifications, or performance work statement. Specific terms governing the set-aside, and source information for the products are shown below.

Contract Line Item (or other location in this solicitation):*

Product:* _____

Manufacturer/Producer:* _____

Set-Aside Terms:* _____

(End of provision)
** For each line item to which a set-aside applies, Contracting officer shall insert appropriate information.*

452.226-72 Price Preference for Award.

As prescribed in 426.7009(c), include the following provision:

Price Preference for Award (XXXX 1997)

Certain products listed in the schedule of this solicitation are subject to a price preference. A list of these products, the amount of the preference, and source information is included in provision 452.226-70, Preferred Products. For purposes of evaluation of offers only, the offered prices for these products will be reduced by the price preference listed in the solicitation.

(End of provision)

W.R. Ashworth,
Director, Office of Procurement and Property Management.

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